
Appeal Decision

Site visit made on 24 March 2014

by Martin Whitehead LLB BSc(Hons) CEng MICE

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 14 April 2014

Appeal Ref: APP/J1860/A/13/2207208

Land off Hop Pole Green, Leigh Sinton, Malvern WR13 5DP

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for outline planning permission.
 - The appeal is made by Lady Christabel Flight against Malvern Hills District Council.
 - The application Ref 13/00738/OUT, is dated 28 May 2013.
 - The development proposed is described on the application as: *'erection of 9 dwellings (of which 3 to be affordable)'*.
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Decision

1. The appeal is dismissed and outline planning permission for the erection of 10 dwellings (of which 4 to be affordable) is refused.

Preliminary and Procedural Matters

2. The appellant and Council have agreed to amend the above description of the development proposed to: *'erection of 10 dwellings (of which 4 to be affordable)'*. I have determined this appeal on the basis of the amended description.
3. At a meeting of the Northern Area Development Management Committee, held on 4 December 2013, the Council resolved that it would have granted planning permission, subject to various planning conditions and a section 106 Agreement. The Council has required the affordable housing, together with contributions towards open space, sport and recreation, education facilities and the Worcester Transport Plan (WTP) to be secured by way of a section 106 Agreement. I have taken these matters into account in my determination of the appeal.
4. An application for costs was made by the appellant against the Council. This application is the subject of a separate decision.
5. The appeal was made and responded to prior to the adoption of the Planning Practice Guidance (planning guidance) on 6 March 2014. I have considered the content of the planning guidance, but in the light of the facts of this case it does not alter my conclusions.

Main Issues

6. Based on the above, the main issues are the effect of the proposal on the provision of affordable housing in the District, public open space and education facilities in the area and highway infrastructure; and whether the proposal

would represent sustainable development in accordance with the National Planning Policy Framework (Framework).

Reasons

7. Although a layout plan has been provided, I understand that the application was submitted in outline form with all matters of detail, except access, reserved for later determination. I have therefore determined the appeal on this basis with the details of the layout as illustrative.
8. The Council has accepted that it cannot demonstrate a five year supply of deliverable housing sites. Therefore, relevant policies for the supply of housing are not to be considered up-to-date, in accordance with paragraph 49 of the Framework. A presumption in favour of sustainable development should apply to the proposed development in accordance with paragraph 14 of the Framework. In the context of the relevant policies being out-of-date, the test in this appeal is therefore whether any adverse impacts would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole, as no specific policies in the Framework indicate development should be restricted.

Affordable Housing, Public open space, Education and Highway Infrastructure

9. In terms of Policy, limited weight can be attached to the relevant policies in the emerging South Worcestershire Development Plan, having regard to the Inspector's Interim conclusions in respect of the Stage 1 of the Examination. The development plan includes the saved policies of the Malvern Hills District Local Plan 2006 (MHDLP).
10. MHDLP Policy CN2 requires the provision of affordable housing in most new residential development to be negotiated. It also states that planning permission will not be granted unless and until the applicant has offered an undertaking, or entered into an agreement, to provide the requisite housing. I am satisfied that this Policy is consistent with the objectives of the Framework, particularly those in paragraph 50, and I have therefore given it significant weight in accordance with paragraph 215 of the Framework. The Council has negotiated a 40% affordable housing provision for the appeal proposal. This provision has not been contested by the appellant.
11. The appellant has submitted a section 106 unilateral undertaking, dated 7 January 2014, to secure the required contributions and affordable housing. The land ownership plan within the unilateral undertaking does not include a strip of land that is within the appeal site. This area of land would be used as part of the proposed access from Hop Pole Green and Flanagan Homes Ltd, the owner of the land, is not one of the signatories to the unilateral undertaking. The access has been agreed with the Highway Authority (HA) as being the only acceptable means of access to the proposed development. The Council has not agreed the unilateral undertaking because of the exclusion of one of the interested parties in the land, which it has suggested creates some uncertainty over the delivery of the planning obligations.
12. Whilst I agree with the appellant that the enforceability of the planning obligations to provide contributions towards education, public open space and the WTP would not be seriously harmed by the exclusion of the signatory, I am

concerned that the exclusion would adversely affect the enforcement of the provision of affordable housing. As the affordable housing would require work on the site, the Council should be given the power to enter the site to carry out the works and recover its costs from the signatories to the obligation under section 106(6) of the Act. This would be more difficult with the party with an interest in the part of the land that provides the access not signing the obligation. In these circumstances, the unilateral undertaking carries limited weight in securing the affordable housing provision.

13. The obligation regarding affordable housing provides that they shall be managed by a 'Registered Provider' and they shall only be transferred to an 'Affordable Housing Provider', which is not defined. The 'Council's Housing Agent' and 'Registered Provider' are defined in the unilateral undertaking, but a 'Registered Provider' has not signed the obligation. As such, the appellant has accepted that the scheme should include an element of social rented affordable housing, but the obligation has been submitted to which the 'Registered Provider' is not a party. These matters indicate to me a further uncertainty about the enforceability of the planning obligation.
14. Without the provision of affordable housing being secured by an enforceable planning obligation, the proposal would have an adverse effect on the provision of affordable housing in the District. As such, it would fail to accord with MHDLP Policy CN2.
15. The planning obligations in the unilateral undertaking should meet the tests in Community Infrastructure Levy (CIL) Regulation 122. These tests are that the obligation is necessary to make the development acceptable in planning terms; directly related to the development; and fairly and reasonable related in scale and kind to the development.
16. In terms of the above tests, I have found that it is necessary to secure the provision of affordable housing to make the development acceptable in planning terms. Insufficient evidence has been provided to show that the contribution towards education facilities would be necessary to address any shortfall in places at schools in the catchment area. As such, it has not been demonstrated that the obligation to secure such contributions is directly related to the development.
17. The evidence provided shows that the contribution towards public open space would be used towards facilities that are lacking in the area or those that would be used by future occupants of the proposed dwellings. Based on this, I am satisfied that, without the obligation to secure this contribution, the proposal would adversely affect the provision of public open space in the area and would fail to accord with MHDLP Policy CN12.
18. There is insufficient evidence provided to show that the contribution towards the WTP that would be secured by an obligation would be used towards works that are necessary to make the development acceptable in planning terms. The Council has suggested planning conditions that would secure works to the public highway and a travel plan. Based on the evidence provided, I am satisfied that these measures would be sufficient to make the development acceptable in planning terms with regard to transport and highway infrastructure.

19. Based on the above, I find that the WTP obligation and the education obligation would not meet the tests in CIL Regulation 122. However, I am satisfied that the public open space obligation would meet the tests in CIL Regulation 122 and paragraph 204 of the Framework. Therefore, I conclude on this main issue that the public open space obligation would ensure that the proposal would not have an adverse effect on the provision of public open space in the area; and it has not been demonstrated that the proposal would have any significant adverse effects on education facilities in the area or on highway infrastructure. However, I have found that the proposal would harm the provision of affordable housing in the District.

Whether Sustainable Development

20. Paragraph 7 of the Framework identifies 3 dimensions to sustainable development: economic, social and environmental. With regard to the economic role, the proposal would provide construction jobs and enhance the local economy through the provision of housing and associated support for local businesses. The social role would benefit from the proposed provision of 10 dwellings, which would make a contribution towards the shortfall in housing supply, on what the Council has accepted is a sustainable site. However, I have not taken into account the proposed provision of affordable housing, due to the uncertainty over the enforceability of the planning obligation.
21. In terms of the environmental role, the proposal would result in additional built development that would be outside the defined settlement boundary. At my site visit, I observed that the proposed extension to the built development would be clearly visible from the surrounding countryside and public highways. This would have an adverse impact on the character and appearance of the landscape, due to the development of an open green area of countryside, even though this impact would be reduced by the site abutting the existing built development. Taking the above roles together, I find that, on balance, the proposal would not represent sustainable development in accordance with the Framework.

Other Matters

22. The proposed development would be accessed from the end of Hop Pole Green cul-de-sac, which is the only means of access to the site that is acceptable to the HA. This requires access over land that is outside the ownership of the appellant. Whilst the appellant has indicated that there is a right of way over this land, I have been given limited evidence, such as a legal agreement, to show that a right of way would be able to be guaranteed.
23. I have considered the other planning appeal decisions that have been referred to by the appellant. However, they involve significantly different circumstances from those of the current appeal, particularly with regard to the provision of affordable housing. Whilst I have noted the points raised, no direct comparisons can be made and I have dealt with this appeal on its own individual planning merits in the light of prevailing policies and guidance.

Conclusions

24. For the reasons given above, I find that the adverse impacts of the proposal, including the harm to the character and appearance of the surrounding countryside and the provision of affordable housing in the District and its failure

to accord with MHDLP Policy CN2, would significantly and demonstrably outweigh the benefits that would result from the proposed development, including the contribution that it would make towards addressing the shortfall in housing supply. As such, it would fail to represent sustainable development in accordance with the Framework. Therefore, having regard to all matters raised, I conclude that the appeal should not succeed.

M J Whitehead

INSPECTOR

Richborough Estates